



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** DAW Forest Products Company

**File:** B-236499

**Date:** November 20, 1989

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### DIGEST

Where during Forest Service timber auction bidder submits an oral bid simultaneously with the auction closure statement, the auction officer properly held the auction open to allow the bidder an opportunity to submit its bid.

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### DECISION

DAW Forest Products Company protests the acceptance of an allegedly untimely oral bid submitted by Crown Pacific Limited during an auction conducted by the Forest Service, United States Department of Agriculture, of 1,340 thousand board feet (MBF) of ponderosa pine, offered under the Twin Lakes Timber Sale on the Deschutes National Forest. DAW contends that the auction officer improperly accepted Crown Pacific's bid after the auction officer had begun the auction closure statement and that DAW should have been awarded the timber sale contract based on the bid it submitted prior to the closure statement.

We deny the protest.

A total of 2,340 MBF of timber was offered under the Twin Lakes Sale, including 1,000 MBF of Lodgepole pine and other timber advertised at a fixed rate of \$7.00 per MBF, and 1,340 MBF of ponderosa pine advertised at a minimum acceptable bid of \$231.59 per MBF. The oral auction was limited to bidding on the ponderosa pine.

As a prerequisite to participation in the oral auction, bidders submitted written sealed bids at least equal to the minimum acceptable bid specified for ponderosa pine. See 16 U.S.C. § 472a(e)(2), (1988). Six bidders were determined to be eligible to participate in the oral auction based on bids submitted and opened on August 1, 1989, the day of the auction.

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Prior to commencing the oral bidding, the auction officer, pursuant to section 62.3 of the Forest Service Handbook, advised bidders that a 1-minute period (bid interval) would be allowed after each bid and that if a higher bid was not received by the end of the bid interval, bidding would close. Bidders were also informed midway through the auction that when the auction officer stated, "The minute is over and the auction is closed," no more bids would be accepted.

After 76 oral bids had been submitted, DAW bid \$307.50 per MBF. Thereafter, the bidding stopped and the auction officer announced the beginning of the 1-minute bid interval. After 45 seconds had elapsed, the auction officer announced that 15 seconds remained. After approximately 14-1/2 seconds, the auction officer states that he began to announce the end of the 1-minute bid interval and state "the auction is closed." Before he said the word "closed," Crown Pacific bid \$308 per MBF. Despite DAW's objections, Crown Pacific's \$308 bid was accepted and the auction continued. After an additional 258 oral bids had been submitted, DAW was declared the high bidder at \$435.05 per MBF of ponderosa pine. DAW's final bid, based on estimated timber volume, was \$170,917.00 more than it would have been had the auction closed at its earlier bid of \$307.50 per MBF.

DAW maintains that the 1-minute bid interval had expired and the auction was closed prior to the beginning of the auction closure statement, and that no bids should have been accepted once the first syllable of the closure statement had been uttered. DAW contends that since Crown Pacific's \$308 bid was submitted during the closure statement, which began after the auction closed, Crown Pacific's \$308 bid and all other bids submitted after DAW's \$307.50 bid should be rejected.

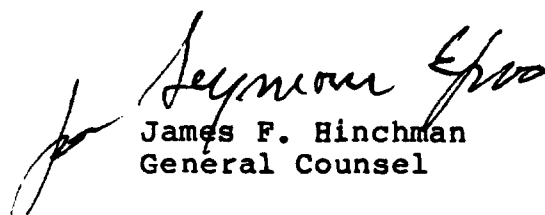
The Forest Service states that Crown Pacific's bid was properly accepted because it was submitted simultaneously with the auction closure statement. In this regard, the auction officer states that he believed Crown Pacific submitted its oral bid before he got to the word "closed," and he therefore continued the bidding despite DAW's objections. His position is corroborated by two other Forest Service employees who were present at the auction. A Forest Service employee who was recording bids states that as the auction officer stated, "If there aren't bids forthcoming, the auction is closed," Crown Pacific submitted its bid at about the time the auction officer said the word "forthcoming." Another employee who assisted at the auction states that Crown Pacific's bid was submitted simultaneously with the auction closure statement. The agency maintains

that the auction officer's determination to accept Crown Pacific's bid and continue with the bidding was in accord with section 2431.59-2 of the Forest Service Manual (FSM), under which the auction officer is required to hold the auction open for as long as necessary to establish the value of the offering and to give each bidder an opportunity to submit a higher bid. We agree.

Our Office has held that under section 2431.59-2 of the FSM, it is incumbent on the auction officer to hold the auction open so long as any bidder expresses a desire to bid. Louisiana-Pacific Corp., B-210904, Oct. 4, 1983, 83-2 CPD ¶ 415. This position reflects our understanding of the policy behind section 2431.59-2: that every effort should be made to ensure for the government the best possible price for the timber. Id. We have recognized that bids submitted during an auction closure statement may properly be accepted and that when there is any doubt as to whether a bid was timely submitted, the doubt should be resolved in favor of continuing the auction. Id.

Here, both DAW and the Forest Service agree that Crown Pacific's \$308 bid was submitted simultaneously with the auction closure statement. Nevertheless, DAW contends that the 1-minute interval already had expired when the auction officer began the closure statement. The auction officer, on the other hand, states that he began the closure statement before the bid interval expired. Where, as here, a bid is submitted simultaneously with the closure statement, and at most approximately 1-2 seconds after the bid interval had expired, any doubt should be resolved in favor of holding the auction open and accepting the bid. Accordingly, we find that the auction officer properly continued the auction after Crown Pacific submitted its bid.

The protest is denied.

  
James F. Hinchman  
General Counsel